

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ROLANDO RODRIGUEZ,
Petitioner,

v.

LOIS RUSSO,
Respondent.

Civil Action No. 05-11521-RCL

ANSWER

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, the respondent hereby answers the petition for writ of habeas corpus as follows:

1. Admitted.

2. Admitted.

3. Respondent admits the allegations in paragraph 3 of the petition. Respondent further states that petitioner was also sentenced to a maximum of twenty (20) years, minimum of nineteen (19) years for count two of the indictment to be served concurrently with his life sentence imposed on count one of the indictment.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9(a)-(c). Admitted. Answering further the respondent states that the citation for the Supreme Judicial Court's opinion is 437 Mass. 554, 773 N.E.2d 946 (2002).

9(d). Respondent admits that the grounds raised in the direct appeal are those set forth in the Brief and Appendix of Defendant-Appellant included in the Supplemental Answer at (Exhibit B).

9(e) and (f). Left blank by petitioner.

10. Admitted.

11(a)(1). Admitted.

11(a)(2). Denied. Answering further the respondent states that the docket reflects that petitioner filed a Motion for New Trial in Suffolk Superior Court on October 6, 2000.

11(a)(3). Denied. Answering further the respondent states that the grounds raised are those set forth in the petitioner's Motion for New Trial included in the Record Appendix of Defendant-Appellant included in the Supplemental Answer at (Exhibit B).

11(a)(4). Admitted.

11(a)(5). Denied. Answering further the respondent states that the docket reflects that the Suffolk Superior Court ordered the conviction for Armed Robbery and the sentence imposed as to that offense be vacated on December 13, 2000. Further, the court denied the remainder of the petitioner's New Trial Motion.

11(a)(6). Denied. Answering further the respondent states that the court denied the remainder of petitioner's Motion for New Trial on March 12, 2001.

11(b). Left blank by petitioner. Answering further the docket reflects that petitioner filed a Motion for Reduction in Verdict or New Trial pursuant to Mass. R. Crim. P. 25 (b)(2) claiming that the verdict was against the weight of the evidence and that there was insufficient evidence of felony murder. Further the docket reflects that the Suffolk Superior Court has yet to make a final

ruling on this motion.

11(c). Admitted.

11(d). Left blank by petitioner.

12. The respondent states that paragraph 12 contains legal argument and conclusions to which no response is required. To the extent that a response is deemed necessary, the respondent denies the factual allegations contained in paragraph 12 of the petition insofar as they are inconsistent with the facts found by the Supreme Judicial Court in *Commonwealth v. Rodriguez*, 437 Mass. 554, 773 N.E.2d 946 (2002).

13. Left blank by petitioner.

14. Denied. Answering further, the Suffolk Superior Court docket indicates that petitioner's Motion pursuant to Mass. R. Crim. P. 25 (b)(2) is pending.

15. Admitted.

16. Admitted.

17. The respondent lacks the knowledge or information sufficient to admit or deny the allegations contained in paragraph 17.

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, the respondent is filing a Supplemental Answer with the following documents from the petitioner's state court proceedings:

1. Docket sheets, *Commonwealth v. Rolando Rodriguez*, SUCR1997-10799.
2. Brief and Record Appendix on appeal from judgments of conviction and the denial of a Motion for New Trial to the Massachusetts Supreme Judicial Court (SJC-08128).

3. Brief and Record Appendix for the Commonwealth on appeal from judgment of conviction and the denial of a Motion for New Trial to the Massachusetts Supreme Judicial Court (SJC-08128).
4. *Commonwealth v. Rodriguez*, 437 Mass. 554, 773 N.E.2d 946 (2002).
5. Petitioner's Motion for Reduction in Verdict or New Trial Pursuant to Mass. R. Crim. P. 25 (b)(2).
6. November 12, 2003 Order on petitioner's Mass. R. Crim. P. 25 (b)(2) motion.
7. December 7, 2004 Order on petitioner's Mass. R. Crim. P. 25 (b)(2) motion.
8. November 1998 Trial Transcripts, *Commonwealth v. Rodrigues*, Volumes I-VIII.
9. December 13, 2000 Motion for New Trial Transcripts, *Commonwealth v. Rodriguez*.

FIRST DEFENSE

The judgment of the state court did not result in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, nor did it result in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. 28 U.S.C. §2254(d)(1).

SECOND DEFENSE

The conviction rests on an adequate and independent state law ground and the petitioner has procedurally defaulted his claims.

THIRD DEFENSE

The petition contains issues of state law not cognizable on federal habeas review.

FOURTH DEFENSE

The decision of the State court was not based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings, and the petitioner cannot rebut the presumption of the correctness of those facts by clear and convincing evidence. 28 U.S.C. §§ 2254(d)(2), (e)(1).

The respondent respectfully reserves the right to amend or supplement this Answer in the future should the need arise.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Jonathan Ofilos
Jonathan Ofilos
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200, ext. 2634
BBO # 658091

Dated: September 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the petitioner, Rolando Rodriguez, on August 26, 2005, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, to him as follows: Rolando Rodriguez, *pro se*, W65630, Souza-Baranowski Correctional Center, P.O. Box 8000, Shirley, Massachusetts 01464.

/s/ Jonathan Ofilos
Jonathan Ofilos
Assistant Attorney General